

J58JDOUC

Conference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 285 GBD

5 LAURENCE F. DOUD III,

6 Defendant.

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8  
9 May 8, 2019  
10 10:57 a.m.

11  
12 Before:

13 HON. GEORGE B. DANIELS,

14 District Judge

15  
16 APPEARANCES

17  
18 GEOFFREY S. BERMAN,  
19 United States Attorney for the  
20 Southern District of New York  
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22 NICOLAS TYLER LANDSMAN ROOS,  
23 Assistant United States Attorney

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GOTTLIEB & JANEY, LLP,  
Attorneys for defendant Doud  
BY: ROBERT CURTIS GOTTLIEB, Esq.  
DERRELLE MARCEL JANEY, Esq.  
Of counsel

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1 (In Open Court)

2 (Case called)

3 THE COURT: Good morning. Let me start with the  
4 government. What is the status from the government's  
5 perspective?

6 MR. ROOS: Your Honor, the defendant was arrested,  
7 presented and arraigned pursuant to your Honor's referral  
8 approximately two weeks ago before a magistrate judge. Your  
9 Honor had scheduled at that time today's initial pretrial  
10 conference. Since the defendant has been arraigned, the order  
11 of business is really to discuss the status of the government's  
12 discovery production and set whatever schedule your Honor  
13 believes is appropriate.

14 Time was excluded up to today's date by the magistrate  
15 judge. In terms of discovery, it is very voluminous in this  
16 case. We are going to make multiple rounds of productions. I  
17 have a protective order signed by the parties for your Honor's  
18 review and approval, but I will pass up to your Deputy at the  
19 end of today's conference.

20 Once the protective order is entered, we have a CD  
21 containing some discovery to provide to defense counsel today.  
22 That includes, among other things, a search warrant and search  
23 warrant affidavit that was previously executed. That is the  
24 only search warrant that exists at this time, but potentially  
25 it can be the basis for motion practice.

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Conference

1 Later this week or next week we anticipate making a  
2 second discovery production. That discovery production is  
3 highly voluminous, contains nearly a million documents  
4 collected in the course of the government's investigation.

5 Defense counsel previously provided us with a hard  
6 drive. The reason why we are not presenting it today, it  
7 literally has taken days to load the data onto the hard drive.  
8 We'll likely make at least one more production after that. It  
9 may come out at the same time as the hard drive. That will be  
10 a catchall, any additional documents obtained pursuant to grand  
11 jury subpoena or other investigative techniques.

12 Of course, as the government's investigation  
13 continues, and if we uncover additional evidence, we'll  
14 disclose it to defense counsel.

15 THE COURT: How much time does defense want to review  
16 that material before we come back to court?

17 MR. GOTTLIEB: Your Honor, thank you very much.

18 As you've now been informed, and we knew that this  
19 case is going to involve hopefully only one hard drive, but  
20 perhaps more, and I know your Honor is well aware that  
21 oftentimes even with the best intentions today, the rolling  
22 discovery may be more rolling over time than anticipated today.

23 If I could suggest setting another status conference  
24 perhaps even AT the end of July, your Honor, hopefully the  
25 discovery will be completed, but certainly by then I think

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Conference

1 we'll be in a position then to inform the court and the  
2 government as far as any scheduling for motions.

3 THE COURT: How is July 31, at 10:00 o'clock?

4 MR. GOTTLIEB: That is very fine, your Honor. Thank  
5 you.

6 THE COURT: We'll adjourn until that day. Is there  
7 anything further by the government?

8 MR. ROOS: Two matters, your Honor.

9 So, first, to apprise the court sort of the  
10 government's intention regarding one aspect of the discovery  
11 production, there are certain documents that the government  
12 obtained from Rochester Drug Cooperative, which is the  
13 defendant's former employer. They were processed through what  
14 we call a filter or taint team, which are a group of attorneys  
15 who are not part of the investigative team to review for  
16 potential privilege.

17 There is an aspect of those documents which our team  
18 deemed to be potentially privileged and intends to return them  
19 to Rochester Drug Cooperative which holds the privilege and not  
20 produced to defense counsel. Under our reading of the law,  
21 because those were deemed privileged, and the company has not  
22 waived them, they're not technically in the government's  
23 possession.

24 The reason I am raising this now, your Honor, is  
25 because, frankly, the government doesn't have -- and

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Conference

1 particularly the agents who are part of the litigation team,  
2 the AUSA part of the litigation team here -- they don't have a  
3 view whether or not these documents should be part of the case.  
4 They're privileged or at least potentially privileged. I am  
5 putting it on the record. That way defense counsel can  
6 contemplate whether or not they have any motion which would  
7 probably go to RDC's invocation of privilege.

8 MR. GOTTLIEB: This raises a very interesting  
9 question. We're aware of many, many documents that have been  
10 out there because there has been an ongoing civil proceeding.  
11 I am concerned that if the government has obtained information  
12 by way of subpoena or otherwise, for the government to  
13 unilaterally decide it's privileged; and, therefore, to return  
14 it to RDC may impede and interfere with our rights under Rule  
15 16 and otherwise.

16 Therefore, I would request that nothing be returned  
17 that is presently in the government's possession. I think it  
18 is a legal fiction, not with any ulterior motives, but to say  
19 it is not in the government's possession. It is in the  
20 government's possession, but for apparently some review which  
21 determined that it's privileged, which we might object to  
22 ultimately.

23 It might properly be turned over.

24 Just initially without looking into it further, your  
25 Honor, I would ask that anything that has been obtained by the

J58JDOUC

Conference

1 government be held by the government. We certainly will engage  
2 in conversations with the government about these items without  
3 asking them to disclose the specifics, but there may have  
4 already been a waiver of what the government believes creates a  
5 privilege, a waiver, because of this civil proceeding, it may  
6 have already been turned over or waived waived. There are,  
7 your Honor, all I am asking is for the government not to return  
8 anything until we can have (therefore have further discussions  
9 with the government and if need be, then to file any  
10 appropriate motion with the court. Therefore.

11 THE COURT: Mr. Ruse?

12 MR. ROOS: That is certainly fine, your Honor. I  
13 think both parties may have not had a sufficient amount of time  
14 to raise this issue to look at the law. We're certainly happy  
15 to instruct the filter attorneys to maintain the documents as  
16 they are, not destroy or release them backwards, sort of hold  
17 that in abeyance until -- I think probably until a motion  
18 schedule is set for pretrial motions in this case and that  
19 probably could certainly be part of defense counsel's motion  
20 practice if it is not an issue that is resolved sooner.

21 I just want to make it clear that those documents are  
22 not ones to be produced because the case AUSAs frankly don't  
23 have access to them.

24 THE COURT: The party at this point has asserted the  
25 privilege as to those?

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Conference

1 MR. ROOS: That's correct, your Honor.

2 THE COURT: We'll proceed that way. Anything further  
3 roots ruse the only other matter, your Honor, is that the  
4 government would move to exclude time between today's date and  
5 July 31, 2019, at 10:00 am so that the government can produce  
6 discovery, defense counsel can review discovery so that the  
7 parties can discuss the instant matters related to any  
8 potential pretrial motion practice since the defense counsel  
9 can contemplate motions and it is the government's view that  
10 those considerations outweigh the need for the public or the  
11 defendant in a speedy trial and therefore, contracts --

12 THE COURT: Any objection?

13 MR. GOTTLIEB: No.

14 THE COURT: I will exclude the time in the interests  
15 of justice between now and July 31. I will see all the parties  
16 on that date at 10:00 o'clock.

17 (Court adjourned)

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